

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

JOHN MARBERRY, PETER MARBERRY AND
JOEL HUNTER, AN ILLINOIS PARTNERSHIP, d/b/a
MARBERRY THE CLEANING FAMILY¹

Employer

and

CHICAGO & CENTRAL STATES JOINT BOARD, UNITE

Petitioner

and

TEXTILE PROCESSORS, SERVICE TRADES,
HEALTH CARE, PROFESSIONAL AND TECHNICAL
EMPLOYEES INTERNATIONAL UNION LOCAL NO. 142

Intervenor

Case 13-RC-20234

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record² in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.³

3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.⁴

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:⁵

All full time and regular part time inside employees, employed at the 220 John Street, North Aurora, Illinois facility, excluding routemen, foremen, counter persons, part time employees who work less than 20 hours per week, managers, maintenance engineers and supervisors as defined in the Act.

DIRECTION OF ELECTION*

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending

immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Chicago & Central States Joint Board, UNITE

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of the full names of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the full names and addresses of all of the eligible voters, shall be filed by the Employer with the undersigned Regional Director who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in **Suite 800, 200 West Adams Street, Chicago, Illinois 60606** on or before **December 13, 1999**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court Building, 1099-14th Street, N.W., Washington, D.C. 20570**. This request must be received by the Board in Washington by **December 20, 1999**.

DATED December 6, 1999 at Chicago, Illinois

/s/Elizabeth Kinney
Regional Director, Region 13

- */ The National Labor Relations Board provides the following rule with respect to the posting of election notices:
- (a) Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Director in the mail. In all cases, the notices shall remain posted until the end of the election.
 - (b) The term "working day" shall mean an entire 24-hour period excluding Saturdays, Sundays, and holidays.
 - (c) A party shall be estopped from objection to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Director at least 5 working days prior to the commencement of the election that it has not received copies of the election notice.

1/ The names of the parties appear as amended at the hearing.

2/ The arguments advanced by the parties at the hearing have been carefully considered.

3/ Marberry The Cleaning Family, an Illinois partnership, is engaged in the business of cleaning and laundry. During the past year, a representative period, the Employer purchased and received goods and materials valued in excess of \$50,000 from other enterprises located within the State of Illinois, each of which other enterprises had received the said products, goods and materials directly from points outside the State of Illinois.

4/ The sole issue presented at the hearing is whether an amendment changing the address and legal name of the Employer on the petition constitutes a “material” change such that the date of the amendment rather than the original filing date is controlling for contract bar purposes. The Employer and Intervenor contend that the amendment to the petition is the controlling filing date for the petition and, as that occurred in the 60 day insulated period of the expiring agreement between it and the Intervenor and after they executed a new collective bargaining agreement, the petition is barred. The Petitioner, on the other hand, contends that the filing date of the original petition is controlling and, as that occurred during the 90 to 60 open period when rival petitions may be filed near the end of the agreement between the Employer and Intervenor, the petition is not barred from being processed.

FACTS

“Marberry The Cleaning Family,” an Illinois partnership (herein the “Partnership”), operates a dry-cleaning and laundry business. The principals of the Partnership are John Marberry, Peter Marberry, and Joel Hunter. The Partnership operates two locations, one at 315 E. Main Street, St. Charles (hereafter the “St. Charles facility”), where it is engaged in dry cleaning, and one at 220 John Street, North Aurora, (hereafter the “North Aurora facility”) which does laundry. There are about 41 inside laundry employees located at the North Aurora facility. The Partnership offices are located at the St. Charles facility. The Partnership purchased the North Aurora facility in 1976, and since that time, the Partnership has maintained a bargaining relationship with Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union Local No. 142 (hereafter “Local 142”), the Intervenor herein. The St. Charles facility also has a relationship with Local 142.

John Marberry and Peter Marberry own all of the outstanding shares in Aurora Cleaners and Furriers, Inc. (hereafter ACF Inc.), an Illinois corporation; Joel Hunter, their business partner in the Partnership for the St. Charles facility and North Aurora facility, has no interest in the corporation. The corporation operates a small dry cleaning plant, located at 129 W. Galena B1, Aurora, IL. 60506, employing 5 individuals, including a driver, and 2 managers. The ACF Inc. is headquartered at 315 E. Main Street, St. Charles, Illinois, the same headquarters as the Partnership. There is no interchange of employees between the Partnership and ACF Inc., they file taxes separately, and they are maintained as separate businesses. ACF Inc., does “do business” with the Partnership,

however, ACF Inc. is treated like any other customer “doing business” with the Partnership. Local 142 also represents employees of ACF Inc.

The North Aurora facility, St. Charles facility and ACF Inc., each are covered by separate agreements with Local 142. The current contracts, effective from January 1, 1999, lapse on December 31, 1999. Each of the three facilities and Local 142 entered into new contracts, effective from January 1, 2000 to December 31, 2002. New agreements for the North Aurora facility and ACF Inc., were signed with Local 142 on October 21, 1999. An agreement for the St. Charles facility was signed on November 3, 1999.

On October 29, 1999, Chicago and Central States Joint Board, UNITE (hereafter “UNITE”) filed a representation petition, naming the employer as Marberry Cleaners, for:

All inside employees employed by employers’ bound to the multi-employer unit. Excluding executive, superintendents, timekeepers, chauffeurs, solicitors, collectors, engineers, or route representatives, supervisors or guards as defined by the Act.

Mr. Smilovits, an organizer for UNITE, organized employees located at the partnership’s North Aurora facility location. He testified that he assumed they were part of a multi-employer unit along with ACF Inc. employees. Soon after acquiring the necessary showing of interest, Mr. Smilovits filed the petition herein, seeking to represent 40 employees of the North Aurora facility. The petition listed 129 W. Galana B1 Aurora, IL. 60506 -- the ACF Inc. location -- as the “Address of Establishment involved”. Mr. Smilovits used the Galana address because he believed that the Partnership’s North Aurora facility and ACF Inc. were operated by the same owners, and had the same contract with Local 142. Mr. Smilovits testified that he arrived at this conclusion based on information he received from a North Aurora facility employee and from the phone book.

The façade of the North Aurora facility bears a sign that says “Illinois Cleaners,” however, some signage at the North Aurora facility states “Marberry Cleaners and Launderers.” The employees of the North Aurora facility location receive paychecks that say Marberry Cleaners, and all of the materials that they work with say “Marberry Cleaners and Launderers.” Further, trucks that pull into the facility say “Marberry, the Cleaning Family” or “Marberry Cleaners and Launderers.”

Peter Marberry, a principal in both entities, received notice of the petition filed by UNITE on Monday, November 8, 1999. He learned about the petition from his brother, and business partner, John Marberry, who called him on November 8th, informing him of the petition. The petition first arrived in the hands of a store employee at ACF Inc., who forwarded it to John Marberry at the North Aurora facility facility. John then forwarded the petition to Peter Marberry at the St. Charles facility office.

At the hearing, the Petitioner moved to amend the petition to reflect the North Aurora facility facility address, rather than the ACF. Inc. address. Further, the Petitioner listed the following as the appropriate unit:

All full time and regular part time inside employees, employed at the 220 John Street, North Aurora, Illinois facility, excluding routemen, foremen, counter persons, part time employees who work less than 20 hours per week, managers, Maintenance engineers and supervisors as defined in the Act.

As set forth above, the Intervenor and the Employer contend that by the above amendments, the original filing date becomes inoperative, and the date of the amendment, November 15, 1999, occurring during the 60 day insulated period of the expiring agreement controls for purposes of processing the petition under the Board's contract bar policies.

ANALYSIS

It is well settled that the filing date of the original petition is controlling if the employers and the operations or employees involved were contemplated by or identified with reasonable accuracy in the original petition, or the amendment does not substantially enlarge the character or size of the unit or the number of employees covered. *Deluxe Metal Furniture*, 121 NLRB 995, 1000, fn. 12 (1958). If the amended petition seeks a unit that is substantially larger and different in character, that amended petition would be treated as a new petition. *Centennial Development Co.*, 218 NLRB 1284 (1975).

U.S. Mattress Corp., 135 NLRB 1150 (1962), involved a situation similar to the instant matter. In *U.S. Mattress*, the petition filed on September 18, 1961, named U.S. Mattress as the employer. It was served on Arthur Cohen, president and treasurer of U.S. Mattress; U.S. Mattress was primarily a seller and jobber of mattresses and box springs. Arthur Cohen also served as the vice president of Restyme, a separate corporation engaged in the manufacture of mattresses, box springs and related items. *Id.* The petition sought 35 employees at a factory located in Irvington, New Jersey. *Id.* On September 22, Arthur Cohen executed an agreement with another labor organization, covering Restyme employees. *Id.* Restyme personnel consisted of 37 production and maintenance employees while U.S. Mattress only employed one maintenance man at Irvington, and 12 salesmen in New York. *Id.* Restyme employees drove trucks, and handled material that said "U.S. Mattress." *Id.* The two corporations maintained separate payroll records and taxes. *Id.* Two brothers, Arthur Cohen and Murray Cohen, owned virtually all the stock in both corporations, and both corporations were housed in the same building in Irvington, New Jersey. *Id.* The Petitioner intended to designate employees of both corporations in the petition, but failed because of the confusion as to the identity of employer of the employees. *Id.* On September 27, the Petitioner amended the petition to include both corporations. *Id.* The Board found the Petitioner's confusion understandable due to the interrelated activities of the two corporations at the Irvington location. *Id.* The Board found that the unit sought by the petitioner was identified with reasonable accuracy based upon the contents of the original petition which showed that the Petitioner intended to include employees of both corporations, as it referenced 35 productions and maintenance employees, and listed the situs as a factory, whose principle product was mattresses. *Id.* Thus, the Board held that the September 22 contract

executed by the Intervenor and Restyme did not serve as a bar for the petition filed September 18; and that the amendment date of September 27 related back to the original filing date. *Id.*

The facts in *U.S. Mattress, supra* are similar to the facts here. The arrangement between the entities in this case easily fosters the possibility of confusion. Here, two partners, the Marberry brothers, have an substantial interest in a partnership and complete interest in a corporation engaged in similar business operations. The corporation and partnership are “held out” as related entities, or at least under the same management, by inter alia, the advertisement in the phone book, and the perception on employees. The employees of “Marberry The Cleaning Family” receive checks in the name of Marberry Cleaners. They work with and around material that bears the Marberry Cleaners name. They load and unload trucks emblazoned with the name of “Marberry Cleaners and Launderers” or “Marberry The Cleaning Family.” The employees at all three facilities are covered by contracts with the same labor organization. The confusion of the Employer’s name by the Petitioner and whether a multi-employer or multi-facility unit was involved is understandable due to the perception that the entities were somehow related.

Further, the employees of the North Aurora facility plant were clearly contemplated, and identified with reasonable accuracy in the original petition. Like the Employer in *U.S. Mattress*, the Employer here was put on notice that the contemplated unit encompassed North Aurora facility, due to the size of the petitioned unit. The Partnership’s St. Charles facility has approximately 14 employees, six of whom are encompassed in the unit there represented by the Intervenor, whereas its North Aurora facility location has about 42-45 employees total, 29 of whom are encompassed by a unit represented by the Intervenor. The corporation’s ACF Inc. location only has 5 employees in total, only one of which is represented by the Intervenor. Thus, the original petition sufficiently notified the Partnership that the representational issues raised by the petition encompassed the Partnership’s North Aurora employees. Furthermore, the subsequent amendment to limit the petitioned for unit to the Partnership’s North Aurora employees upon the Petitioner’s discovery of the nature of the employing entities involved and the existing units neither enlarges the size of the petitioned for unit or changes the fact that the representation status of the Partnership’s North Aurora employees was and is placed in issue by both the original petition and the amended petitions.

The Employer and Intervenor argue, in effect, that because of the Petitioner's inaccuracy in stating the Employer's legal name and the location of the desired bargaining unit employees in the original petition, the original petition was a nullity and that the contracts subsequently executed, barred the amended petition. It is clear from the foregoing, that, notwithstanding the fact that the Employer's legal name and location were not accurately designated in the Petitioner's original petition, the petition was sufficient to put the Employer on notice that the Petitioner was seeking to represent its 40 or so employees in North Aurora facility. Mere misnomers cannot act as the reasoning for dismissing an otherwise valid petition, especially when it is the inter-related nature of the Employer’s operations with other entities that creates the confusion and knowledge of the true nature of the employing entity rests in the hands of the employer.

The Employer and Intervenor’s reliance on *The Baldwin Company*, 81 NLRB 927 (1949), does not bolster their position. In that case the Board found that an amendment to

a petition did not relate back to the original filing date, where the original petition named a wholly owned subsidiary of the employer rather than the employer of the employees encompassed by the petition and the employing entity was not served with the petition. *Id.* Baldwin is distinguishable from the facts of this case because the employer in Baldwin, unlike the Employer herein, had not been served with a petition indicating that the Petitioner was seeking to represent its employees. *Id.* In this case, the Employer does not raise the lack of service as a defense to the petition. Rather, the record meticulously outlines the manner in which the petition made its way from one store clerk, to both Marberry brothers, who are principals of both entities described herein. Thus, the Employer in this case was put on notice of the petition, unlike the Employer in *Baldwin*. *See also, Allied Beverage Distribution Co.*, 143 NLRB 149 (1963), where the Board also dismissed a petition based on lack of notice alone.

Based upon the foregoing and the entire record herein, I find that the filing date of the original petition is controlling, rather than the amendment, and as it was filed during the 90 to 60 open period of the expiring contract there is no contractual bar to processing the instant petition.

5/ The above described unit is in keeping with the unit historically represented by the Intervenor. While the agreement between the Partnership and the Intervenor includes the term “dry cleaning employees” in its description of “inside employees” the record shows that there are no dry cleaning employees at the North Aurora facility. The agreement between the Partnership and the Intervenor also excludes part-time employees working less than 20 hours per week from the union security requirements of the agreement, and the record indicates that have historically been excluded from the unit. Based upon the record and the history of collective bargaining, I find the above described unit to be an appropriate unit.

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